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Re: **United States Patent Application No. 09/879,911**

**Inventor: Max Aebi et al.**

**Filed: June 14, 2001**

**Entitled: SPINAL DISC SPACE DISTRACTOR**

**Confirmation No. 7179**

**Art Unit: 3731**

**Attorney Docket No. 008932-471-999**

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PAGE 1/4 \* RCVD AT 6/3/2004 5:22:47 PM [Eastern Daylight Time] \* SVR:USPTO-EFXXRF-1/8 \* DNIS:8729306 \* CSID:+2127557306 \* DURATION (mm:ss):01:24

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**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that the attached "Response to Species Requirement" for Non-provisional application Ser. No. 09/879,911 entitled "SPINAL DISC SPACE DISTRATOR" is being filed with the United States Patent and Trademark Office by facsimile transmission on June 3, 2004 to facsimile telephone number 703-872-9306.

\_\_\_\_\_  
Giuseppe Molaro  
(Reg. No. 52,039)

June 3, 2004  
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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Max Aebi <i>et al.</i>	Confirmation No.	7179
Serial No.	09/879,911	Art Unit:	3731
Filed:	June 14, 2001	Examiner:	Reip, David Owen
For:	SPINAL DISC SPACE DISTRATOR	Attorney Docket:	008932-471-999

**RESPONSE TO SPECIES REQUIREMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the outstanding Office Action dated May 5, 2004, in which the Examiner imposed a species requirement, please consider the following remarks.

The Examiner has indicated that the present application contains claims directed to more than one species and thus requires an election under 35 U.S.C. 121 of one of the following species of the claimed invention:

- I. Species 1, Figs. 1-3 and 6-9
- II. Species 2, Fig. 10
- III. Species 3, Fig. 11
- IV. Species 4, Figs. 13 and 13
- V. Species 5, Figs. 14-16.

In response to the species election, Applicant provisionally elects the invention of Species 5 - as depicted in Figs. 14-16 - drawn to a spinal disc distractor - for prosecution in this application. Applicant reserves the right to file divisional applications to protect the inventions of Species 1-4. Applicant provisionally elects Species 5 with the understanding that the claims shall be restricted to this species only if no claim finally held to be allowable is held generic. Applicant believes that pending claims 1-35 are readable on the elected Species.

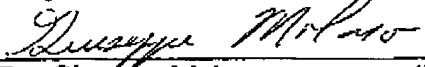
Applicant respectfully traverses the Species Requirement, at least with regards to Figure 8A. Applicant respectfully submits that introduction of Figure 8A is not new matter

and should be considered part of Species 5. Accordingly, Applicant respectfully requests that Figure 8A be considered in the subject application.

No fee is believed due for this submission. Should any fees be required, however, please charge such fees to Jones Day Deposit Account No. 501013.

Date: June 3, 2004

Respectfully submitted,

 52,039  
By: Giuseppe Molaro (Reg. No.)

35,340  
For: Brian M. Rothery (Reg. No.)

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